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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,345	08/27/2003	Mitsuo Yasuchi	041465-5195	3438
9629	7590	07/13/2005	EXAMINER	
MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			PHAM, LAM P	
			ART UNIT	PAPER NUMBER

2636

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

Office Action Summary	Application No.	Applicant(s)	
	10/648,345	YASUCHI, MITSUO	
	Examiner	Art Unit	
	Lam P. Pham	2636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/27/03; 1/08/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-9, 11-13, 15-19, drawn to detection of sharp and transient rise in the heartbeat, classified in class 600, subclass 300.
 - II. Claims 10, 14, 20, drawn to calculation of peak to peak interval , classified in class 340, subclass 576.

If group I is selected then the generic claims are: 1-3, 11, 15-17; and select one of :

- A. Claims 4-6, 12, 18, drawn to elapsed time measuring, classified in class 600, subclass 509.
 - B. Claims 7-9, 13, 19, drawn to temporal variance calculating, classified in class 600, subclass 300.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it draws to a comparison between an amplitude over the average of the peak-to-peak interval and another amplitude over

Art Unit: 2636

the average value for estimating a fatigue level. The subcombination has separate utility such as heartbeat abnormal detection.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kawakami et al. (US 5769085) disclose an apparatus for detecting awareness of a vehicle driver.

Saitoh et al. (US 5813989) disclose a driving mental condition detecting apparatus.

Yasushi et al. (US 6104296) disclose a biological information detection apparatus.

Ikeyama (US 4706072) disclose human condition monitoring.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lam P. Pham whose telephone number is 571-272-2977. The examiner can normally be reached on 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffery A. Hofsass can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 or **after July 15, 571-273-8300.**

Art Unit: 2636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lam Pham
July 8, 2005



JEFFERY HOFSAAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600